

Section 25137-8 is amended and renumbered to read:

§ ~~25137-8~~25137-8.1. Motion Picture and Television Film Producers and Television Networks – Apportionment of Income.

(a) This regulation applies to motion picture and television film producers, producers of television commercials, and to television networks. The provisions of this regulation shall also apply to independent television stations to the extent they are members of a chain of commonly owned stations all of which operate as network affiliates or all of which are unaffiliated with a network but which operate collectively in purchasing properties for telecast or in marketing air time, or which operate as a producer. This regulation applies to ~~income~~-taxable years beginning on and after January 1, 1982, and before January 1, 2010.

(b) *Definitions.*

(1) "Film" means the physical embodiment of a play, story or other literary, commercial, educational or artistic work; as a motion picture, video tape, disc or other similar medium, except that it does not include news or sports films produced for telecast.

"Film" does not include video cassettes or discs intended for home viewing.

(2) Each episode of a series of films produced for television shall constitute a separate film notwithstanding that the series relates to the same principal subject and is produced during one or more television seasons.

(3) "Release date" means the date on which a film is placed in service. A film is placed in service when it is first telecast or exhibited to the primary audience for which the film was created. Thus, a motion picture theater film is placed in service when it is first publicly exhibited for entertainment purposes and an educational film is placed in service when it is first exhibited for instructional purposes. Each episode of a television series is placed in service when it is first telecast. A film is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for telecast or exhibition, or merely because it is telecast or exhibited to prospective exhibitors, sponsors, or purchasers, or it is shown in a "sneak preview" before a select audience.

(4) A "film" is deemed to be tangible personal property.

(5) "Rent" shall include license fees for the exhibition or telecast of films.

(6) "Tangible personal property" used in the business, whether owned or rented, shall include but is not limited to sets, props, wardrobes, and other similar equipment.

(7) A "subscriber" to a subscription television telecaster is the individual residence or other outlet that ~~which~~ is the ultimate recipient of the transmission.

(8) "Telecast" means the transmission of an electronic signal by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides or other tangible conduits of communication.

(c) *Apportionment of Business Income.*

The property, payroll and sales factor of the apportionment formula for Motion Picture and Television Film Producers and Television Networks shall be computed pursuant to Sections 25128 through 25137 of the Revenue and Taxation Code and the regulation adopted pursuant thereto, except as provided in this regulation.

(1) Property Factor.

(A) In General.

(i) In the case of rented studios, the net annual rental rate shall include only the amount of the basic or flat rental charge by the studio for the use of a stage and other permanent equipment such as sound recording equipment, etc., except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer (even though rented on a day-to-day basis) shall be included. Lump-sum net rental payments for a period that encompasses more than a single income year shall be assigned ratably over the rental period.

(ii) The value of the films shall—

(I) be the original cost of producing the film as determined for federal income tax purposes, before any adjustment for federal credits which have not been claimed for state purposes, and

(II) include talent salaries.

(iii) The value of a film shall not be included in the property until its release date.

(iv) Video cassettes and discs shall be included in the property factor at their inventory cost as shown in the taxpayer's books and records.

(B) Denominator.

(i) All real property and tangible property (other than films) whether owned or rented, which is used in the business, shall be included in the denominator.

(ii) Films, other than films the cost of which is expensed for California tax purpose at the time of production, shall be included in the property factor at original cost for twelve years beginning with the release date.

(iii) Films of a topical nature including news or current event programs, sporting events or interview shows, the cost of which is expensed for California tax purposes at the time of production, shall be included in the property factor at original cost for one year beginning with the release date.

(iv) All films, other than those included in the denominator under clause (ii) or (iii) of this subparagraph, shall be aggregated and treated as a single film property which shall be included in the property factor. Such property shall be valued at eight times the gross receipts generated during the income year from the theater distribution, network television, television syndication, cable television, subscription television and the marketing of video cassettes and discs through licensing or direct selling, or similar receipts, but in no event in an amount greater than the total original cost of such aggregated film property.

(C) Numerator.

(i) If tangible personal property (other than films) is located or used in this state for part of the income year, its value shall be determined by applying the ratio the number of days the property is located or used in this state bears to the total number of days such property was owned or rented during the income year.

(ii) The total value of films that are included in the property factor under subparagraph (B) of paragraph (1) of this subsection shall be attributed to this state in the same ratio in which the total California receipts from such films as determined in subparagraphs (A), (B) and (C) of paragraph (3) of this subsection pertaining to the sales factor bears to the total of such receipts everywhere.

(2) Payroll Factor.

(A) In General.

(i) The denominator shall include all compensation paid to employees during the income years, including talent salaries. Residual and profit participation payments constitute compensation paid to employees.

(ii) The amount paid to a corporation for providing the services of an actor or director who is an employee of such corporation or for loaning the services of an actor or director who is under contract with such corporation shall, if substantial, be included in the producer's payroll factor as if the amount paid was compensation paid to an employee of the producer.

- (B) Numerator. Compensation of employees in the production of a film on location shall be attributed to the state where the services are or were performed. Compensation of all other employees shall be governed by Regulations 25132 and 25133.
- (3) Sales Factor Numerator. The numerator shall include all gross receipts of the taxpayer from sources within this state including the following:
- (A) Gross receipts from films in release to theaters and television stations located in this state.
- (B) Gross receipts from films in release to or by a television network for network telecast shall be attributed to this state in the ratio that the audience for such network stations (owned and affiliated) located in California bears to the total audience for all such network stations (owned and affiliated) everywhere. The audience shall be determined by rate card values published annually in the *Television & Cable Factbook*, Vol. I, "Stations Volume," Television Digest, Inc., Washington, D.C., if available, or by other published market surveys, or, if none is available, by population data published by the U.S. Bureau of the Census.
- (C) Gross receipts from films in release to subscription television telecasters shall be attributed to this state in the ratio that the subscribers for such telecaster located in California bears to the total subscribers of such telecaster everywhere. If the number of subscribers cannot be determined accurately from records maintained by the taxpayer, the ratio shall be determined on the basis of the applicable year's statistics on subscribers published in *Cable Vision*, International Thompson Communication Inc., Denver, Colorado, if available, or by other published market surveys, or, if none is available, by population data published by the U.S. Bureau of the Census for all states in which the telecaster has subscribers.
- (D) Receipts from sales and rentals of video cassettes and discs shall be included in the sales factor as provided in Regulations 25135 and 25136.

Note: Authority cited: Section 2642219503, Revenue and Taxation Code.
Reference: Section 25137, Revenue and Taxation Code.